

SENATE BILL REPORT

HB 2838

As Reported By Senate Committee On:
Financial Services, Insurance & Housing, February 24, 2004

Title: An act relating to capital calls by domestic mutual insurers.

Brief Description: Regulating capital calls by domestic mutual insurers.

Sponsors: Representatives Benson and Schual-Berke.

Brief History:

Committee Activity: Financial Services, Insurance & Housing: 2/24/04 [DP].

SENATE COMMITTEE ON FINANCIAL SERVICES, INSURANCE & HOUSING

Majority Report: Do pass.

Signed by Senators Benton, Chair; Winsley, Vice Chair; Berkey, Keiser, Murray, Prentice and Roach.

Staff: Joanne Conrad (786-7472)

Background: The Insurance Commissioner is responsible for the licensing and regulation of domestic mutual insurance companies. A domestic mutual insurer is an insurance company that is headquartered in this state, owned by its members, and operated in their interest. The members must be state residents. The policies issued by a domestic mutual insurer must cover lives, property, or risks located in Washington.

The members of a domestic mutual insurer may be required to pay amounts in excess of their policy premiums under certain circumstances. Each member may have a contingent liability for the discharge of the insurer's obligations of between one and five additional premiums at the annual premium rate and for a one-year term. The contingent liability must be stated in the insurer's articles of incorporation, and the policy must contain a statement of the contingent liability. A domestic mutual insurer may, with the commissioner's approval, make an assessment on policyholders holding policies within the preceding 12 months that provide for contingent liability if: (1) the insurer's assets are less than its liabilities and the minimum required surplus; and (2) the deficiency is not cured from other sources. The assessment may be made in the amount the commissioner determines is needed to make the insurer fully solvent, subject to certain limitations.

Insurers must pay to the commissioner an annual premium tax equal to 2 percent of all premiums collected or received during the preceding calendar year for policies on risks or property resident, situated, or to be performed in this state.

Any person forming an insurer or affiliated entities must obtain a solicitation permit from the commissioner before advertising or soliciting or receiving any funds, agreement, stock subscription, or membership. Certain requirements for obtaining a solicitation permit also

apply to solicitation or receipt of funds after an insurer receives a certificate of authority or completes its initial organization and financing.

Summary of Bill: In addition to their statutory assessment authority, domestic mutual insurers are authorized to increase their surpluses by issuing capital calls. A domestic mutual insurer may require policyholders or applicants for insurance to pay a capital call amount – a sum in addition to the premium payment – to be eligible to renew a policy or to be issued a new policy. The insurer may not cancel or deny benefits under an existing policy if a policyholder does not pay the call amount.

Before issuing a capital call, a domestic mutual insurer must have adopted articles of incorporation or documents authorizing capital calls. At least 90 days before issuing the capital call, the insurer also must provide information regarding the insurer's authority to issue a capital call to every policyholder. For any capital call issued on or after January 1, 2006, the insurer must include information regarding the insurer's authority to issue a capital call in every policyholder's policy. This information must be provided at least one full policy renewal cycle before a capital call is issued.

The insurer must provide a notice to the commissioner of its intent to issue a capital call at least 90 days before issuance. This notice of intent must include:

- the specific purpose(s) of the capital call;
- the total amount intended to be raised for each stated purpose;
- the grounds the insurer relied upon to determine the capital call is the best available option for raising capital;
- the alternative methods of raising capital the insurer considered, and the reasons for rejecting each alternative in favor of the capital call;
- an annual accounting of all rate filings and actions, total underwriting losses, and total dividends paid in the 10 years preceding filing of the notice of intent; and
- a complete application for a solicitation permit as required by state law.

The commissioner must approve the policy or insuring instrument, capital call, and solicitation permit before a capital call is issued. The insurer must provide any additional information the commissioner deems useful or necessary to evaluate the proposed capital call. The commissioner may deny a capital call if it is not in the best interest of the insurer, policyholders, or citizens of the state. In making this determination, the commissioner may consider factors such as the insurer's financial health, impact on the marketplace, alternative means of raising capital, frequency of previous capital calls, effect of raising premiums instead of issuing the capital call, impact on state revenue, or any other factor the commissioner deems proper.

Funds raised by a capital call are not premiums for the purposes of determining premium taxes under state law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: Capital calls should be limited, yet available. Capital adequacy affects an insurer's AM Best ratings. Some types of insurers cannot raise capital by stock offerings, and borrowing may be problematic, so capital calls are useful.

Testimony Against: None.

Testified: Rep. Benson, prime sponsor; Tom Myers, Physicians' Insurance (pro).